



ITG News

Keeping First Nations Informed



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Message From The Director

Many of you have probably read about the growth in abusive schemes that began two decades ago with what we now call "tax shelters". While the IRS was successful in addressing those initial schemes, we are now experiencing a new generation of individuals promoting opportunities to avoid taxes through structured transactions that "sound too good to be true" and often are.

Unfortunately, Indian tribal governments are not immune from these promoters. In fact, tribal governments have recently helped the IRS identify several promoters that are attempting to use tribal sovereignty and some of the special tax benefits that tribes enjoy, to enrich a select group of individuals they represent. These promoters may offer the tribe a limited benefit that is marketed as being at no cost or risk to the tribe. In some cases the promoters of these schemes may be invisible to tribal leadership, since they hide behind shell corporations and/or attempt to conduct transactions directly with tribal employees.

The simple fact is that these schemes do bring risk to the tribe. Even where there may be no direct financial risk, the risk to the tribe's reputation is significant and the risk to any tribal employee who becomes involved in such a scheme can be substantial.

The office of Indian Tribal Governments has initiated a program to work with tribes to address this area and ensure that these abusive schemes do not gain a foothold in Indian Country. Our Abuse Detection and Prevention Team (ADAPT) is already developing actions to identify abusive schemes being promoted to tribes, and is working with tribes to address them. Our goal is to protect the interests of all governments through mutual actions that will eliminate these schemes. Our web site will contain information on identified schemes, as well as a method to report any concerns to the ADAPT group. We look forward to partnering with tribes and other interested parties in this effort.

Christie Jacobs



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Tip Reporting Agreements – Minimizing Financial Risk

Many tribes have enterprises that employ individuals who receive tip income. These tribal enterprises range from food service establishments to some of the largest casinos in the world. Handling large sums of cash presents many risks, and tribes go to great lengths to minimize any risk of loss.

Unfortunately some tribes have not taken steps to minimize risk that can be present from unreported tip income. Employees who do not fully report their tips to their employer can create a future tax liability for both themselves and their employer. If unreported tip income is discovered as a result of an IRS examination, both the employee and employer could face significant assessments of tax, penalties, and interest. These assessments can be particularly troublesome for the employer, who generally has not anticipated the liability.

In order to reduce the potential for unreported tip income, the IRS has developed a Tip Compliance Program. This program combines employee education with a written agreement that calculates tip rates by occupations and work shifts. Employees are openly encouraged to participate in the program. As part of the agreement, the IRS guarantees that it will not examine tip income reporting by those employees as long as they report tips at or above the established rates. Two variations of these agreements are available – the Tip Rate Determination Agreement (TRDA), and the Gaming Industry Tip Compliance Agreement (GITCA). Interested employers have their choice between the two.

The elimination of risk was realized by one tribal casino that had entered into an agreement. The amount of tip income being reported by their employees rose by over 400% subsequent to the agreement. By entering into the agreement, the casino eliminated a potential unforeseen liability of \$1.5 million dollars per year. While they paid FICA tax on the additional tips being reported, that liability could be predicted and planned. This enabled them to adequately forecast their revenues and expenses, with a significant reduction to future risk of further tax assessments. Similar benefits exist for employees. One benefit is that they will not be examined on tip income. They also receive a full and accurate reporting of their income, which can be a benefit for programs that are based on income levels. This includes pensions, 401(k) plans, and loans.

If your tribe has employees who report tips, and you have not joined our Tip Compliance Program, we encourage you to contact your Indian Tribal Governments Specialist.

???Questions???

Contact your ITG Specialist, or our toll-free call site at 877-829-5500



Update on the Development of an IRS/Tribal Consultation Policy

We continue to move forward in the process to develop an IRS/Tribal Consultation Policy, having completed 12 regional listening meetings with tribal representatives during 2003. A summary of the input received at those meetings was posted to the ITG web site at www.irs.gov/tribes in January, with a link to submit any further comments. Once the period for submitting further input has passed, we will undertake an initial draft that will be further shared for comment. It is our hope to have a final draft policy for review by late 2004.

We welcome your input, so that we can create the best possible policy. Visit our web site at www.irs.gov/tribes to review the input to date and offer us your thoughts before April 30th.

Tribal Enterprise Structure Issues

We have recently encountered several situations where tribes have formed business structures that may unnecessarily subject their earnings to federal income tax. While federally recognized Indian tribes are not subject to federal income tax, if they form a state-chartered corporation that is not specifically exempted from income tax under the Internal Revenue Code (such as IRC 501(c)(3) entities), the entity must file a Form 1120 and pay federal income tax on any net earnings.

In addition, we have encountered situations where tribes have formed subchapter S corporations, where the tribe is a shareholder. While the Service may acknowledge this status and process the resultant Form 1120-S that is filed, the simple fact is that tribes cannot be shareholders in subchapter S corporations. Once these situations are discovered, the entity must be converted to a C corporation, and the resultant Form 1120 will subject the tribe to federal income tax on any net earnings.

If you have either of these situations present within your tribal enterprises, and you wish to restructure them to mitigate the potential tax problem, you should contact your ITG Specialist so that we can take prompt action to effect corrections and limit any potential interest and penalties. In addition, the sooner that a problem is identified, the sooner that you can change the structure of the entity to avoid the future federal tax consequences.

Tribal Employment Tax Guide Now Available

Publication 4268, our on-line Employment Tax Guide for Tribal Governments, is now available at our web site at www.irs.gov/tribes.



EFTPS—For Your Federal Tax Deposits

Are you tired of filling out tax deposit coupons, writing checks, and then running to the bank to make your Federal Tax Deposits? If your answer is yes, then the Electronic Federal Tax Payment System (EFTPS) could be the easiest way to pay all your Federal Business Taxes. EFTPS is a tax payment system offered free from the U.S. Department of the Treasury. Using your Personal Computer or a telephone, you input your tax payment information and send it.

When you enroll in EFTPS you can select how you want to make your payments. There are two primary payment methods and you can select either or both.

EFTPS-Direct is an electronic payment method that allows you to access EFTPS directly to report your tax information. On the date you indicate, you will instruct EFTPS to move the funds from your account to the Treasury's account. Funds will not move from your account until the date you indicate, and your tax records will be updated with the IRS. You can initiate your payment directly to EFTPS using the Internet, PC software (free Windows-based software that's easy to install and use), or your phone. All three input methods are interchangeable and you can make your payments 24 hours a day, 7 days a week.

Using the Online – Internet option allows you to cancel a payment, review your payment history and change bank account information. Online is easy to navigate and secure with both a PIN and Internet Password combination.

EFTPS also offers payment scheduling. You may schedule your payment instructions for up to 120 days in advance of the tax due date, and then EFTPS will automatically make your payments for you on the due date you indicate.

How does it work?

1. At least one day prior to your tax due date, before 8:00pm ET, you access EFTPS. EFTPS will prompt you for the necessary information to complete your tax payment.
2. The system processes the information reported, and when accepted, you receive an Electronic Funds Transfer Acknowledgement Number that you should keep for your records.
3. EFTPS will originate an ACH debit transaction against your designated account on the date you indicated when you made your tax payment.
4. The funds will be transferred to the Treasury's account and the tax data will be reported to the IRS to update your tax records.

EFTPS-Through a Financial Institution is a payment method that allows you to instruct a financial institution to electronically move funds from your account to the Treasury's account. Not all financial institutions offer this service, so make sure your financial institution offers this service, find out how much it costs, and if you are eligible to use it.

How does it work?

1. At least one day prior to the tax due date, you initiate the tax payment through your financial institution. The tax payment must be made prior to your financial institution's ACH processing deadline.

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2. Your financial institution will originate an ACH credit transaction to EFTPS, transferring the funds to the Treasury's account, and the tax data to IRS for updating your tax records.

Whether you use EFTPS-Direct or EFTPS-Through a Financial Institution, you're in control of initiating your tax payments. Your tax due date remains the same, and no government agency has access to your account.

Signing up is easy. To receive your Enrollment Form and instructions, call 1-800-555-4477 or 1-800-945-8400, or enroll online at www.eftps.gov. As soon as you receive your Confirmation Package and Personal Identification Number (PIN), you'll have everything you need to begin using EFTPS.

Excise Tax Claims

Communication Taxes:

If communication taxes have been paid on telephone systems used for essential tribal government functions, it is possible to file a claim for refund of those taxes. The statute of limitations for filing such a claim is 3 years from the close of the tribal fiscal year. In other words, if the tribal fiscal year ends on December 31, 2000, the period for filing a claim for that year would end on December 31, 2003. Any claim for refund would have to be received by the Internal Revenue Service on or before that date.

To determine the amount of tax to be refunded, prepare a spreadsheet showing the amount of tax paid by quarter for all of the quarters for which the statute of limitations is open. The amount can be determined by review of the telephone bills for the qualifying telephones. This spreadsheet will become an attachment to the form 8849, which is the claim form.

File form 8849 and schedule 6 of form 8849 to make the claim. Form 8849 is the cover sheet that contains the name, address, employer identification number of the entity making the claim, and identifies the type of claim being filed. For communication tax claims, check the box "other claims" and write in "communications excise tax". Schedule 6, which will be attached along with the spreadsheet showing the

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To add your name or e-mail address to our mailing list,
please contact us via e-mail at
robert.d.bixby@irs.gov,
or call Robert Bixby at (920) 433-3810

*Account or Tax Questions??
Call Customer Account Services at
1-877-829-5500*



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tax paid by quarter, shows the total amount of the claimed tax.

In addition, a statement should be attached identifying the tribe as “a tribe treated as a state, under section 7871 IRC, with respect to the application of communication excise taxes is therefore exempt from these taxes by section 4253 IRC”.

The form 8849 should be signed and sent to the address as shown in the “where to file” section of the instructions for form 8849. Retain a copy of the form 8849 and attachments as well as the source documents (telephone bills) for at least 3 years. These claims are subject to examination to ensure that only the excise tax on telephones used for essential government purposes is being claimed.

Gasoline Taxes:

Gasoline claims are normally filed on a quarterly basis (if the amount of the claim is at least \$750) or on an annual basis. A quarterly claim can be filed in any of the quarters when the claim amount reaches the \$750 level.

Only one (1) claim is allowed to be filed for any period (Quarter or year). The “one claim rule” can create problems for multiple tribal entities under one federal employer identification number (EIN). For example, the tribe has a police force, a social service agency and the tribal government all using the same EIN. Each of these entities has vehicles that are used for essential government services. If any one of the entities files a gasoline claim without including the information necessary for the other entities, the others cannot file a claim for the same period. It is very important that all the tribal entities communicate with the others to ensure that none are denied the proper credit for the fuel tax. It probably would be helpful for only one of the entities to do the filing of the claims for all the entities and be charged with determining the total qualifying fuel usage for all.

For tribal entities, all gasoline claims are filed using form 8849. This is true for both the quarterly and annual claims. Follow the instructions for completing form 8849 and mail the claim to:

Internal Revenue Service
Cincinnati, OH 45999-0002.

Reminder: Only the gasoline used for essential governmental services is eligible for the credit. Casino vehicles do not qualify for the credit.

Tribal governments cannot file fuel tax credits for diesel fuel. Diesel fuel should be purchased free of federal excise tax using an exemption certificate filed with the vendor.

Do you have a question that you would like to see answered in our newsletter?
If so, contact us via e-mail at Robert.D.Bixby@irs.gov.

Federal Tax Calendar for Second Quarter 2004

April 2004

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2 * Payroll date 3/27 - 3/30	3
4	5	6	7 * Payroll date 3/31 - 4/2	8	9 * Payroll date 4/3 - 4/6	10
11	12 Employees report tips from March	13	14 * Payroll date 4/7 - 4/9	15 ** Monthly Deposit for March	16 * Payroll date 4/10 - 4/13	17
18	19	20	21 * Payroll date 4/14 - 4/16	22	23 * Payroll date 4/17 - 4/20	24
25	26	27	28 * Payroll date 4/21 - 4/23	29	30 * Payroll date 4/24 - 4/27	

May 2004

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5 * Payroll date 4/28 - 4/30	6	7 * Payroll date 5/1 - 5/4	8
9	10 Employees report tips from April	11	12 * Payroll date 5/5 - 5/7	13	14 * Payroll date 5/8 - 5/11	15
16	17 ** Monthly deposit for April	18	19 * Payroll date 5/12 - 5/14	20	21 * Payroll date 5/15 - 5/18	22
23	24	25	26 * Payroll date 5/19 - 5/21	27	28 * Payroll date 5/22 - 5/25	29
30	31					

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule. ** = Make a Monthly Deposit if you qualify under that rule.

7 NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

June 2004

SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	3 * Payroll date 5/26-5/28	4 * Payroll date 5/29-6/1	5
6	7	8	9 * Payroll date 6/2 - 6/4	10 Employees report tips from May	11 * Payroll date 6/5 -6/8	12
13	14	15 ** Monthly deposit for May	16 * Payroll date 6/9 - 6/11	17	18 * Payroll date 6/12- 6/15	19
20	21	22	23 * Payroll date 6/16- 6/18	24	25 * Payroll date 6/19- 6/22	26
27	28	29	30 * Payroll date 6/23- 6/25			

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed

Return Filing Dates

By April 30th

File Form 941 for the first quarter of 2004. If the tax was deposited in full and on time, file by May 10th.

File Form 730 on applicable wagers accepted during March 2004.

By June 1st

File Form 730 for applicable wagers accepted during April 2004.

By June 30th

File Form 730 for applicable wagers accepted during May 2004.